STRAITS SETTLEMENTS REPORTS.

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[ORIGINAL BANKRUPTCY JURISDICTION.]
McELWAINE, C.J.
January 21, 1938.

RE W. S. BEE & COMPANY.

[BANKRUPTCIES Nos. 59 and 60 of 1937.]

Moneylenders Ordinance, S. 6—sufficiency of account books.

The ordinary books of account kept by Chettiars, namely, the ledger and day book contain sufficient particulars to comply with the requirements of Section 6 of the Moneylenders Ordinance.

MOTION.

Roland Braddell (*Koek* with him) for the Appellant.

E. B. Williams, Official Assignee, in person.

Cur. Ad. Vult.

MCELWAINE, C. J.—In the Bankruptcy of W. S. Bee & Company two proofs were lodged by the Attorney of P. A. L. M. R. M. Ramasamy Chettiar (hereafter referred to as the Chettiar) for $5073.33 and $2050.30, the first against the separate estate of one of the partners of W. S. Bee & Company, the other against the joint estate.

The Official Assignee examined and inquired into the two claims. He believed the attorney for the Chettiar and disbelieved the bankrupts and would have admitted both proofs to rank for ordinary dividends but for section 6 of the Money Lenders Ordinance (Chapter 218).

The learned Official Assignee considered that the Chettiar had not complied with section 6 and on this ground alone he rejected the proofs.

Section 6 so far as material requires that

> "Every money lender shall keep a regular account of each loan clearly stating in plain words, and in English numerals the items and transactions incidental to the account entered in a book paged and bound in such a manner as not to facilitate the elimination of pages or the interpolation or substitution of new pages.
>
> "Any person who fails to comply with the section in respect of any transaction shall not be entitled to enforce any claim in respect of that transaction but shall be guilty of an offence and shall be liable on conviction to a fine."

I think it well to include these last words shewing that the section is a penal section in view of the argument addressed to me that the section should be construed strictly against the money lender.

The Chettiar in accordance with the practice of chettiars kept two books of account, one of which has been referred to as a Day Book, the other as a Ledger. These were large well-bound books regularly and neatly kept and there was no suggestion that they did not comply with the requirement preventing removal or substitution of leaves.

The books were not kept in accordance with the English system of book-keeping but the section does not require that they should.

The Official Assignee submitted that the book mentioned in the section is a ledger. I have no doubt that it would be much more convenient for the Official Assignee and for Courts if each loan were entered in a ledger shewing full particulars of the loan, of interest accrued due and of interest paid and of principal repaid, the same page not shewing transactions relating to entirely different loans.

But convenience of form is not the same thing as clearness of statement and it is the latter which the law requires.

The Chettiar says that the day book gives all particulars which the law requires though each transaction respecting the same loan may be separated by many pages of transactions respecting other loans. Evidence was given before me by Mr. Smalley, a Fellow of the Commonwealth Institute of Accountants, who has had considerable experience of the chettiar system of book-keeping. He said that a chettiar day book is a combination of what, in English accountancy would be called a cash book and journal and that the chettiar day book if properly kept must shew the cash position.

When these books had been written up to 15th November 1937 Mr. Smalley took a trial balance and found that the books balanced perfectly provided the cash in hand as shewn by the day book was included.

This was done to shew that the day book contained a cash account.

Chettiars make no entry of interest in their accounts until the interest is paid.

The attorney of the chettiar gave evidence that the day book shewed the cash position and that he can on any day calculate from the day book the amount of cash he ought to have in hand.

The first witness called by the Official Assignee was Mr. Nayer who has considerable experience of chettiars' accounts. He agreed that the day book shews the cash position.

Mr. Cox who is an experienced accountant, though not familiar with chettiars' book-keeping, gave evidence that in his opinion Mr. Smalley's trial balance only shewed that the Ledger had been correctly posted from the day book. But Mr. Smalley's trial balance was got from the day book, not from the ledger. Mr. Cox did not consider that the entries of payments in the day book were adequate descriptions of cash payments. He thought this account not plain on its face. Mr. Tan Thoon Lip who has

been assistant Official Assignee since 1935 in his evidence said:—

> "Apart from the Money Lenders Ordinance these accounts if translated would be perfectly intelligible to me. I would know what cash was advanced and could find out from the books what interest was paid."

I understood Mr. Braddell to rely on the day book and not on the ledger to prove compliance with the Money Lenders Ordinance.

The following translation of relevant portions of the day book by a sworn Court Interpreter was put in:

"From Line 44 on page 138 to Line 1 on page 139

	Cr.	Dr.
No. 279. Dr. Two persons (viz) (1) Chinese Tay Kim Choon and (2) Lee Hock Loke of Tanjong Katong in respect of 1—"On Demand Note"—interest @ 1 (12%) ..		$5,000.00
Page 165.		
Daybook (showing) credits and cash in hand from 14th day of Margali of the year Dhatu corresponding to 28th of December 1936. From line 5 to 9 on page 165.		
Dr. Chinese Tay Kim Choon and Chinese Lee Hock Loke, partners of the aforesaid (firm)—Signature—in respect of 1—Mercantile Bank cheque given to be cashed on 17-1-37—including interest		$2,020.00
Cr. Profit per aforesaid ..	$20.00"	

In the entry relating to the $5,000 the symbol "(12%)" is not in the day book but was inserted by the interpreter to explain that "interest @ 1" meant 1% per month, and was the equivalent of 12% per annum the rate of interest specified in the promissory note which was a note payable on demand.

There was evidence, which was not contradicted that interest on chettiar loans is paid monthly and this is corroborated by the fact that the Bankrupts paid $50 interest on this note of 4th November 1936, on 8th December 1936 and on 5th January 1937. No point was raised either in argument or in evidence as to whether a rate of 1% per month is the same thing as a rate of 12% per annum. The whole point was, does the book clearly state in plain words the items and transactions.

I may here add that the two payments of interest on the $5,000 demand note appear on pages of the day book, transactions of which were not put in. The day book therefore shews the names of the borrowers, the amount of the loan, the rate of interest (at a rate per month instead of at the rate per annum contained in the promissory note), the amounts of interest paid on the note and the dates on which these payments were made.

In my opinion the day book does shew all the items and transactions incidental to the account relating to this $5,000 loan.

I think that the day book entries relating to the Mercantile Bank cheque "including interest" $2,020 taken with the reverse entry "Profit per aforesaid $20" indicate that the loan was $2,000 and that the cheque for $2,020 was in payment of that loan together with $20 interest from 28th December 1936, the date of the cheque and of the loan to 17th January 1937, the date on which the loan was to be repaid.

The Official Assignee in paragraph 11 of his finding says that it is "quite clear to me that one cannot from these books alone say how much cash was paid out to the debtors by the P.A.L.R.M. firm (i.e. the chettiar). It is no doubt possible with the aid of the evidence of Vedivelloo Pillay to obtain the necessary information but one cannot get that information from the books alone. The question which I have to decide is whether the books give sufficient information to comply with section 6 of the Money Lenders Ordinance. It may further be observed that though in this case Vedivelloo Pillay was able to give first hand evidence of the payment, it often happens in dealing with money lenders' cases that the particular agent is no longer available, having returned to India. In such cases one may have to depend on the books alone and in this case the books alone are not adequate. This is a further argument in support of the contention that cash payments should be specifically recorded in the books themselves."

Mr. Cox in his evidence said "I do not consider that the entries of the payments in the day book are adequate descriptions of cash payments. They only allow one to assume what is meant. The account is not plain on its face."

Now I think it is plain from the evidence of Messrs. Smalley, Nayer, and Tan Thoon Lip that the day book discloses the cash position and that it is possible to extract from it without extrinsic evidence what amount was actually advanced. It is not so plain that where a promissory note is stated to carry interest at 1, 1% per month is intended, but if this intention is accepted then it can be ascertained how much is due on any particular date whether the interest is debited or not and when interest paid is entered the total indebtedness of the debtor can be ascertained.

In my opinion the day book does contain the requisite information and this information can be extracted from it.

But the section does not merely require that the book should contain the information. It must clearly state in plain words the items and transactions.

The Official Assignee argued that "transaction" means the whole contract. I am not satisfied that this is so. There are other provisions for a record of the whole contract. I hardly think that the Legislature intends the memorandum, when one is given, to be transcribed into the cash book or any other book of account, nor do I think it necessary to copy a promissory note to which section 4(4) applies into a book of account.

Many things can be expressed in different ways, some people preferring one way and some another, but I think it reasonably plain from the two entries in the day book that Tay Kim Soon and Lee Hock Lock became debtors in specified sums in respect of a demand note in one case and in respect of a cheque given to be cashed at a further date in the other case. If the money was not advanced they would not be debtors as they are shown to be.

For these reasons I am of opinion that the day book shews sufficiently plainly:—

1. That on 5th November 1936 a sum of $5,000 was lent to Tay Kim Soon and Lee Hock Lock on a demand promissory note; and,
2. That on the 28th December 1936 $2,000 was paid to the same two persons in respect of a cheque for $2,020 which was not to be cashed until the 17th of January 1937.

It is admitted that these advances were actually made, so the entries are correct and conform to the requirements of section 6.

I therefore allow the two proofs.

Appeal allowed.

Solicitors for the appellant—*Chan & Eber.*

[APPELLATE CRIMINAL JURISDICTION]

McELWAINE, C. J.

January 25, 1938.

M. SATHAIAH son of MUTHIAIAH PILLAY & 3 ors. .....Appellants.

vs.

REX .....Respondent.

[MAGISTRATE'S APPEALS Nos. 93, 98, 99 & 100 of 1937]

Criminal law — cheating — charge — particulars of—common intention—Penal Code, S. 34.

Per McElwaine, C.J.—

A charge, and especially a charge in a complicated case, should be accompanied by particulars of the acts complained of as constituting the crime charged when the mere mention of the time, place persons and crime are insufficient to explain by what means the crime was committed. This is particularly necessary in charges of such offences as cheating. The particulars need not be incorporated in the charge. It is sufficient if they are contained in a separate memorandum supplied to the accused and to the Court.

When Section 34 of the Penal Code is relied upon, the substance of the section should be indicated in the particulars or at least explained to the accused at the commencement of the trial if the accused are not represented by counsel.

MAGISTRATE'S APPEALS.

Tampoe-Phillips for the Appellants.

Storr, Crown Counsel, for the Respondent.

Cur. Ad. Vult.

McELWAINE, C. J.—The four accused were tried by the District Judge, Singapore, on three charges of cheating.

The first charge read as follows:—

> That you on or about the 1st day of July 1937 at Singapore, cheated Harry Bowrey and Leonard Richards, trading under the Firm name of Bowrey, Richards & Co., by dishonestly inducing them to deliver bags of rice valued at $2,300 to you which were the property of the said firm of Bowrey, Richards & Co. and thereby committed an offence punishable under section 420 of the Penal Code (Chapter 20).

The other two charges were identical save that the dates of the alleged offences were 13th July and 19th July respectively and the value of the rice was different.

No particulars of the dishonest inducement are given in the charge, nor were particulars asked for or given.

The case was, as the District Judge says, a complicated case. The trial occupied ten days. In his grounds of Judgment the learned District Judge asks "what are the misrepresentations which caused Bowrey & Richards to sell this rice? First of all I suppose the allegation by the second accused that Vel owned Jalan Sultan."

A case should be so presented that it should not be necessary to "suppose."

At the trial counsel for No. 4 accused in applying for his discharge dealt with the question of Jalan Sultan and nothing else, which indicates that he too supposed that the misrepresentation alleged related to Jalan Sultan. It does not seem to have occurred to him that other misrepresentations possibly lurked in the evidence and there is no reason to suppose that the then undefended prisoners were any better aware of the case they had to meet.

Perhaps due to this lack of particularity there is in the evidence that vagueness about dates referred to by the District Judge.

A very large proportion of the evidence went to shew that the four accused, even if they were not partners in the strict sense, were nevertheless so concerned in the business of Vel & Company that they had a common intention to get rice from Bowrey & Richards on credit. There is ample evidence of this.